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ex parte

April 27, 1998

RECEIVED

APR 27 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20054

EX PARTE OR LATE FILED

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket Nos. 92-237 Carrier Identification Codes

Dear Ms. Salas:

On April 14, 1998, Michael G. Hoffman, James U. Troup and Robert H. Jackson, on behalf of VarTec Telecom, Inc. ("VarTec"), met with Kent R. Nilsson, Kris A. Monteith, Renee Alexander and David O. Ward of the Common Carrier Bureau ("CCB"). We discussed VarTec's experiences with the conversion to four-digit carrier identification codes ("CICs"), as well as VarTec's concerns with the barriers to effective customer education that are being created by many incumbent local exchange carriers ("ILECs").

Among the barriers identified was the non-cooperation of various ILECs, including US WEST, with VarTec's request, at VarTec's expense, to include additional information for its customers on the "VarTec pages" of the ILECs' telephone bills. This additional information, which would be sent to VarTec's existing customers only, would tell these customers to dial 1010811 to reach VarTec's services because of the dialing pattern change associated with the mandatory conversion to four-digit CICs.¹ As part of these efforts, VarTec contacted US WEST in January 1998, asking that US WEST include VarTec bill insert messages in the May and June 1998 telephone bills.² After raising objections to VarTec's plan, US WEST did agree to allow VarTec to place bill inserts in US WEST's bills, only to revoke that agreement.

As described in VarTec's March 23, 1998, letter from James U. Troup and Robert H. Jackson to Geraldine A. Matise, US WEST raised various objections to the bill insert language proposed by VarTec.

¹ As was shown in VarTec's April 14, 1998, *ex parte* filing with the Federal Communications Commission ("FCC") in this proceeding, VarTec began a massive customer education campaign in October 1997. VarTec's advertisements since this education effort began have used the seven-digit carrier access code (1010811) exclusively.

² Letter from Ken Ball, VarTec, to Carol Janousek, US WEST, dated January 26, 1997 (*sic*). A copy is attached hereto as Exhibit "A."

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After lengthy negotiations, VarTec largely capitulated to US WEST's "market-protecting" edit demands.³ VarTec believes that spending money to reach its customers with a less-than-adequate educational message is better than not educating its customers at all. Hence, VarTec reluctantly gave into US WEST's demands.

Soon after US WEST had finally agreed to allow VarTec to reach its customers, using only "non-market-threatening" language, US WEST announced that it did not have sufficient resources available to allow VarTec's message to be sent to its customers in either May or June 1998.⁴ The first opportunity available to VarTec would have come, "coincidentally," only after VarTec's customers could no longer dial 10811 to reach VarTec's services (*i.e.*, September or October). US WEST did, however, dangle the future availability of a streamlined process to implement "future market messages in less than 60 days."

US WEST's bill insert machinations have continued. Next, and surprisingly to VarTec, US WEST "found" some available billing resources, which would allow VarTec to send its bill insert messages to VarTec's customers in the June 1998 billing cycle. However, that message was immediately retracted by US WEST. On April 21, 1998, Christin McConnell, a VarTec employee, received both a voice-mail message and an e-mail message from a US WEST employee, Carol Janousek.⁵ According to Ms. Janousek, the newly "found" billing resources are no longer available to VarTec. US WEST has admitted that one of its marketing groups is trying to block all bill messages discussing the CIC expansion. Such anti-competitive conduct by an ILEC is unreasonable under the Communications Act.

The large ILECs have been, in general, uncooperative toward VarTec's efforts to educate customers about the new carrier access code dialing patterns. US WEST, in particular, has been especially uninterested in ensuring that customers can use the carrier of their choice, after the end of the CIC transition period.⁶ While US WEST recognized early that a new intercept message must be developed,⁷

³ See facsimile from Sandra Sargent, U S WEST, to Christin McConnell, VarTec, dated February 13, 1998. A copy is attached hereto as Exhibit "B." That document states in part: "Carrier will author each Market Message. USWC retains editorial judgment and authority to reject any Market Message which USWC, in its reasonable judgment, determines to: . . . D. Contains text with 800 numbers and/or dial around information for purposes of accessing the Carrier's facilities."

⁴ E-mail message from Carol Janousek, US WEST, to Christin McConnell, VarTec, dated April 14, 1998. A copy is attached hereto as Exhibit "C."

⁵ These messages have been transcribed and are attached hereto as Exhibits "D" and "E" respectively.

⁶ Perhaps, this lack of interest stems from US WEST not seeing customer education as a source of additional revenue. The quest for more revenue seems to be about the only consistent motivator of US WEST. For example, US WEST president Solomon D. Trujillo said that those US WEST customers who are interested in price or who are low-volume users (*i.e.*, those customers whose bills are below the \$40-50 per month) are welcome to move to US WEST's competitors. *Communications Daily*, March 20, 1998, at 5.

⁷ See Network Interconnection Interoperability Forum Issue #78, cited in letter from James U. Troup and Robert H. Jackson, representing VarTec, to Geraldine A. Matise, FCC, dated March 23, 1998, at n.8.

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US WEST subsequently has shown its disregard for a successful customer transition to four-digit CICs. For example, US WEST's comments in the instant proceeding argue that a standard intercept message need only be "fairly 'standard' within that carrier's operations" to meet the requirements of the FCC.⁸ Presumably, this position would allow each of the more than 1000 LECs in the United States to develop their own "standard" message irrespective of how non-standard these messages could become nationally and the resulting impact of such a "non-standard" standard intercept message on the dialing public.⁹

The only long-term reason apparent to VarTec why US WEST would not want to use its substantial resources to provide bill inserts paid for by VarTec to educate the public is that US WEST views any customer confusion as giving it an edge in US WEST's planned entry into the interLATA market. US WEST is also motivated, in the short term, by its desire to protect its declining, intraLATA, long distance revenue from dial-around competition.¹⁰

While most large ILECs are not as candid as US WEST¹¹ about their reluctance to spend money ensuring that numbering changes are implemented smoothly, these large carriers have generally shown a pattern of foot dragging in this area. They tend to act in a reasonable and responsible manner only after being confronted with pressure from regulators. For example, the FCC had to push the large ILECs to move forward the introduction of the 888 service access code ("SAC") to meet customer needs and to prod the large ILECs to do extensive customer education regarding the introduction of interchangeable area codes.¹²

The North American Numbering Plan ("NANP") is a critical part of the nation's telecommunications infrastructure and must be maintained through continuous investments by all carriers. Without this infrastructure, customers cannot communicate effectively and efficiently, and carriers cannot make profits. Yet, many of the large ILECs do not believe that they must invest in this infrastructure unless and until the specific numbering change at hand will immediately produce additional revenues for the

⁸ US WEST Comments at 12.

⁹ Needless to say, it would be interesting to see the RBOCs' level of concern with customer instruction and education associated with the conversion to four-digit CICs if the RBOCs were permitted to enter the interLATA market on a dial-around basis only.

¹⁰ Data from the FCC's *Statistics of Common Carriers, 1996, (1997)* show that US WEST had more than \$1.02 billion in long distance message revenues in 1996. Table 2.9. This represents a decline of 8.16% (more than \$90.8 million) from 1995's reported long distance revenues. *Statistics of Common Carriers, 1995, (1996)*.

¹¹ US WEST Comments at 15, n.42. "In determining to provide the industry consensus message, US WEST is incurring costs that, at least arguably, were not legally necessary . . ." See also, n.5, *supra*, and accompanying text.

¹² See Letter from James U. Troup and Robert H. Jackson, representing VarTec, to Geraldine Matise, FCC, dated March 23, 1998, at 7-8.

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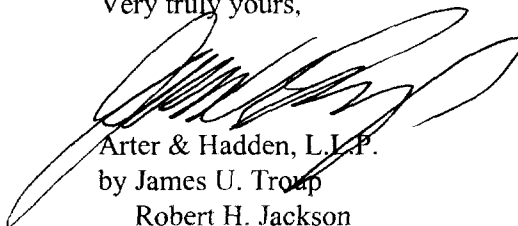
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large ILECs.¹³ The large ILECs simply do not face sufficient market pressure to invest in the NANP infrastructure.

Unfortunately, market pressures alone are insufficient to move all of the large ILECs to make the investment necessary to maintain a robust NANP. VarTec believes that there is a serious risk that the full transition to four-digit CICs will not be smooth and that both customers and IXC's will be harmed. The FCC needs to act to fill the gaps left by insufficient market pressure on the large ILECs. The FCC should immediately release an order directing the large ILECs to take steps necessary to ensure a smooth transition to four-digit CICs as outlined previously by VarTec.¹⁴

Please place a copy of this letter in the record in the above-captioned proceeding. Acknowledgment and date of receipt of this letter are requested. A duplicate letter is attached for this purpose.

Very truly yours,



Arter & Hadden, L.L.P.
by James U. Troup
Robert H. Jackson

Enclosures

cc: A. Richard Metzger
Geraldine A. Matisse
Kent R. Nilsson
Kris A. Monteith
Renee Alexander
David O. Ward
Michael G. Hoffman

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¹³ Contrast the behavior of the large ILECs with that of many software applications developers. Developers of software applications, be they word processors or games, do not ignore changes in operating software. Rather, they must often revise their applications to work better with changes in computer operating software. Sometimes, a modified application can be sold as a new, updated version to users. Yet, many times, applications software developers must develop a "free" patch for current customers simply to allow current users to run their existing software successfully. This behavior is caused by the pressures of a competitive market in applications software.

¹⁴ *Ex parte* letter from Robert H. Jackson, representing VarTec, to Magalie Roman Salas, FCC, dated April 14, 1998.



January 26, 1997

Ms. Carol Janousek
US West
1801 California Street
Room 2110
Denver, CO 80202

Dear Carol:

VarTec would like to enclose a bill message in the May and June bills to educate the end users about the FCC mandated CIC expansion. The message will be as follows:

The Federal Communications Commission has required VarTec Telecom, Inc. and all other telecommunications companies to expand their access code from 5 to 7 digits. That means the DimeLine number 10811 you have been using to save on all long distance calls will now have a "10" preceding it so that it will become 1010-811(easily remembered as "Dime-Dime-811"). Please start using this new code today.

It is VarTec's understanding that US West charges \$.03 per message plus a \$2500 set up charge for each region. If this does not accurately memorialize our agreement, or should you have any additional questions, please contact Christin McConnell at 972-274-7796.

Sincerely,

Ken Ball

Executive Vice President
Marketing

VarTec Telecom, Inc.
3200 W. Pleasant Run Road
Lancaster, Texas 75146
(972) 230-7200
(972) 230-7299 Fax

February 13, 1998

MEMORANDUM TO: Christin McConnell - VarTec

SUBJECT: Market Message Wording

FROM: Sandra Sargent - U S WEST

Here is the wording that is, currently, acceptable to U S WEST.

"The Federal Communications Commission has required VarTec Telecom, Inc. and all other telecommunications companies to expand their access code from 5 to 7 digits. That means the DimeLine number 10811 you have been using to save on all long distance calls will be changing. Please call us at _____ for more information."

Please let me know if this wording will work for your company. I can be reached on 303-896-8937 or by pager 303-821-5185.

Post-It® Fax Note	7671	Date	2-16-98	# of pages	1
To	Christin McConnell	From	Sandra Sargent		
Co./Dept.		Co.			
Phone #	7688	Phone #	303-896-8937		
Fax #	972-230-7573	Fax #	303-896-9022		

Christin McConnell

From: Carol Janousek [cjanous@uswest.com]
Sent: Tuesday, April 14, 1998 3:17 PM
To: Camcconn@vartec.net
Subject: Re: market message

resending

Carol Janousek
04/14/98 11:43 AM

To: camcconn@vartec.net
cc: Pam Jenkins/DNVRULNS10/USWEST/US@USWEST, Sandy
Sargent/GROUPWARE/USWEST/US@USWEST, John
Moore/GROUPWARE/USWEST/US@USWEST
Subject: market message

As we discussed, Our CRIS resources are not available to print your market message in either May or June. This request was escalated through Director level in both Product Management and in Technologies. We are still pursuing the possibility of implementation in a later month and will keep you advised of our progress.

In our discussion yesterday, you asked me to pursue providing you BNA information at a reduced rate for your customers so you could notify them through other channels. In order to pursue this option, I would appreciate some information from you:

-Do you have some volume estimates?

-Will April casual customers be the source of the above volume estimates?

-When will you be able to provide the list of casual customers to request BNA information? How will you provide that list?

-How quickly will you need this list?

I regret our present resources will not accommodate your request for June implementation. The good news is U S WEST will be implementing a new "streamlined" process to implement market messages. I don't have the details yet but I believe we will be able to offer implementation of future market messages in less than 60 days. I will keep you posted on the progress of this project and hope VarTec will be able to take advantage of this in the near future.

Sincerely,

Carol

**Transcript of a Voice Mail Message from Carol Janousek,
US WEST, to Christin McConnell, VarTec**

4/21/98 12:18 p.m.

Hi Christin, this is Carol Janousek. I didn't respond to your message yesterday because I didn't get it until late in the day and also I was still waiting on some confirmation. Um, I want to give you a heads up because I still don't have an answer that...that you need. John Moore sent a letter in US Mail to you, um actually, I think to Connie, I'm not sure who in the company, but, in any event, confirming that we had your market message in the June release. Subsequent to that letter getting in the mail, we have had some internal escalations from our mass markets group, uh of very high level, um, trying to block these market messages and that, um, escalation has not yet been, um, completed and come to any agreement. So, although our product management people and our technologies people have come around and have, um, provided us with, um, the implementation ability and product management said its ok to put in, we are now having another group in the company trying to fight it. So I...Pam and I are pushing very hard to get an answer today, I am hoping to get an answer today, um, for you, and I will get it to you as soon as I know for sure. Um, but again, technically and product management wise, we can do it. Now we are just fighting, um, with another group within our company, um, and that is going back to the, um, you know, the um, competing, um, competing traffic and that kind of thing. So, I'll let you know. Thanks. Bye.

From: <MHOFFMAN@vartec.net>
To: WDC.AH(RJacksol)
Date: 4/21/98 6:53pm
Subject: FW: US West Bill Message for CIC expansion

FYI

> -----Original Message-----

> From: Christin McConnell
> Sent: Tuesday, April 21, 1998 2:07 PM
> To: Michael Hoffman; Ron Hughes; Ken Ball
> Cc: Becky Gipson; Connie Mitchell
> Subject: US West Bill Message for CIC expansion

>
> Yesterday I sent an email to Carol Janousek at US West to confirm

> VarTec's place in the June release for bill messages. I just received

> a message with her response:

> John Moore sent a letter, which we have not received, via US Mail

> stating that VarTec had been granted a spot in the June release. Since

> that letter was written, a high level internal escalation has taken

> place at US West. It seems the mass markets group is trying to block

> all bill messages which discuss the CIC expansion. They feel that any

> message concerning CIC expansion would compete with a US West offering.

> VarTec submitted a letter requesting a bill message to instruct end

> users on the FCC mandated change in dialing pattern to US West on

> January 26, 1998. I cannot believe that US West is trying to block

> this message at the end of April.

CC: CLE.INTERNET("BGIPSON@vartec.net")